

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

JUSTIN M. EVANS,)	
)	
Plaintiff,)	Civil Action No. 7:20-cv-00434
)	
v.)	<u>DISMISSAL ORDER</u>
)	
B. KANODE, <i>et al.</i> ,)	By: Hon. Thomas T. Cullen
)	United States District Judge
Defendants.)	

Plaintiff Justin M. Evans, an inmate proceeding *pro se*, filed this civil rights action. On March 25, 2022, the remaining defendants filed a motion for summary judgment. On March 28, 2022, the Clerk mailed a notice advising Evans that he had 21 days to submit any further counter-affidavits or other relevant evidence contradicting, explaining, or avoiding the defendants' evidence before the court ruled on his motion. The notice warned Evans:

If Plaintiff does not respond to Defendant[s'] pleadings, the Court will assume that Plaintiff has lost interest in the case, and/or that Plaintiff agrees with what the Defendant[s] state[] in their responsive pleading(s). If Plaintiff wishes to continue with the case, it is necessary that Plaintiff respond in an appropriate fashion. Plaintiff may wish to respond with counter-affidavits or other additional evidence as outlined above. However, if Plaintiff does not file some response within the twenty-one (21) day period, the Court may dismiss the case for failure to prosecute.

(Notice, ECF No. 78 (emphasis in original). That 21-day period expired more than a week ago, and Evans has not filed any response to the motion, nor has he filed a request for additional time to respond.

Accordingly, the court concludes that, pursuant to Rule 41(b) of the Federal Rules of Civil Procedure, Evans has failed to prosecute this action. *See generally Ballard v. Carlson*, 882

F.2d 93 (4th Cir. 1989) (affirming dismissal of suit where plaintiff failed to comply with court order). Having duly notified the parties that Evans's failure to respond to defendants' dispositive motion would be interpreted as a failure to prosecute and would be cause for dismissal of the action without prejudice, the court concludes that such dismissal is appropriate.

For the foregoing reasons, it is hereby **ORDERED** that this action is **DISMISSED WITHOUT PREJUDICE** for failure to prosecute, *see* Fed. R. Civ. P. 41(b); the pending summary judgment motion, ECF No. 76, is **DISMISSED WITHOUT PREJUDICE** as moot; and the Clerk shall **STRIKE** the case from the active docket of the court. Evans may refile his claims in a separate case once he is prepared to comply with the court's instructions, subject to the applicable statute of limitations.

The Clerk is directed to send copies of this Order to Evans and to counsel of record for defendants.

ENTERED this 28th day of April, 2022.

/s/ Thomas T. Cullen
HON. THOMAS T. CULLEN
UNITED STATES DISTRICT JUDGE